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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 989 of 2006
Date of decision: 4.10.2007

Raj Kumar Jain and another **...Petitioners**

Versus

Raj Kumar and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Pritam Saini, Advocate for the petitioners.

Mr. Kulbhushan Sharma, Advocate for respondents No.1 & 2

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RAJESH BINDAL, J.

The challenge in the present petition is to the order dated December 06, 2005 passed by learned Appellate Authority whereby appeal filed by the petitioners/landlord, against the dismissal of his eviction petition on the ground of non payment of rent as well as material impairment in the value and utility of the building, has been dismissed by learned Appellate Authority.

Infact issue regarding material impairment in the value and utility of building was not pressed by the petitioners/landlord. The only issue pressed was non payment of rent.

Heard learned counsel for the parties and perused the order passed by the Courts below.

Admittedly the present eviction petition was filed by petitioners/landlord on May 9, 1995 claiming arrears of rent from February 12, 1985. However, respondents had tendered the rent for a period of three years from the date of filing of petition. Accepting the rent tendered by the respondents/tenants to be valid, the eviction petition was dismissed by the learned Rent Controller, which order was upheld by the Appellate Authority.

Learned counsel for the petitioners/landlord submitted that in fact the proceedings for fixing of fair rent initiated by the

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petitioners/landlord even prior to filing of the present eviction petition were pending before the Rent Controller and ultimately it was before this Court that on November 13, 1999 that the matter was compromised and the rent was fixed at the rate of Rs. 80/- per month payable from February 12, 1985. On that basis, the contention is that once the tenants had admitted that they are liable to pay rent from February 12, 1985, there is no question of their remaining in possession of the premises when the arrears of rent claimed by the petitioners in the eviction petition had not been tendered.

On the other hand, learned counsel for the respondents submitted that in terms of Section 13 (2) (i) of the Haryana Urban (Control of Rent & Eviction) Act, 1973, (for short "the Act"), which reads as under:-

"**13. Eviction of tenants:- (1)**

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(2) A landlord who seeks to evict his tenant shall apply to the Controller, for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied,-

(i) that the tenant has not paid or rendered the rent due from him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable ;

Provided that if the tenant, within a period of fifteen days of the first hearing of the application for ejectment after due service, pays or tenders the arrears of rent and interest, to be calculated by the Controller, at eight per centum per annum on such arrears together with such costs of the application, if any, as may be allowed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid :

Provided further that the landlord shall not be entitled to claim arrears of rent for a period exceeding three years

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immediately preceding the date of application under the provisions of this Act."

a landlord is not entitled to claim arrears of rent for a period exceeding three years immediately preceding the date of the application under the Act. In the present case, respondents/tenants having tendered rent for a period of three years from the date of filing of the petition, no eviction could possible be ordered for non payment of any previous rent for which the petitioners may have other remedy in accordance with law.

Once there is statutory bar under Section 13 (2) (i) of the Act from claiming any arrears of rent beyond a period of three years preceding the date of petition, I do not find any illegality has been committed by the learned Appellate Authority in rejecting the contention made by the petitioners/landlord claiming rent for a period of more than three years for the purpose of the eviction.

Accordingly, I do not find any merit in the present petition and the same is dismissed.

October 04, 2007 **(Rajesh Bindal)**
Pka **Judge**